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SENATE BILL 743

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

L. SKIP VERNON

AN ACT

RELATING TO CHILDREN; PROVIDING SENTENCING ALTERNATIVES FOR CERTAIN JUVENILE OFFENDERS; PROVIDING FOR THE DESIGNATION OF AN OFFENSE COMMITTED BY A JUVENILE AS AN EXTENDED JURISDICTION JUVENILE PROSECUTION AND FOR THE IMPOSITION OF AN ADULT SENTENCE; CREATING NEW CRIMINAL OFFENSES AND PENALTIES; ENACTING THE EXTENDED JURISDICTION JUVENILE PROSECUTION ACT, NEW SECTIONS OF THE CHILDREN'S CODE AND NEW SECTIONS OF THE CRIMINAL CODE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Children's Code is enacted to read:

"[NEW MATERIAL] SHORT TITLE. -- Sections 1 through 17 of this act may be cited as the "Extended Jurisdiction Juvenile Prosecution Act". "

Section 2. A new section of the Children's Code is enacted

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1 to read:

2 "[NEW MATERIAL] PURPOSE. --The purpose of the Extended
3 Jurisdiction Juvenile Prosecution Act is to provide a children's
4 court judge with an additional sentencing mechanism that allows
5 the option of prosecuting a child as an adult in district court
6 or sentencing a child to both a juvenile sentence, which is
7 immediately imposed, and also an adult sentence, which is
8 imposed only if the child violates the juvenile sentence or
9 commits a new crime."

10 Section 3. A new section of the Children's Code is enacted
11 to read:

12 "[NEW MATERIAL] DEFINITIONS. --As used in the Extended
13 Jurisdiction Juvenile Prosecution Act:

14 A. "court" means the children's court division of
15 the district court; and

16 B. "handgun" means a loaded or unloaded pistol,
17 revolver or firearm that is designed to or may readily be
18 converted to expel a projectile by the action of an explosion
19 and the barrel length of which, not including a revolving,
20 detachable or magazine breech, does not exceed twelve inches."

21 Section 4. A new section of the Children's Code is enacted
22 to read:

23 "[NEW MATERIAL] EXTENDED JURISDICTION JUVENILE
24 PROSECUTION--DESIGNATION. --A proceeding involving a child is an
25 extended jurisdiction juvenile prosecution if:

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1 A. the child was fourteen to seventeen years of age
2 at the time that the child was alleged to have committed either
3 a crime of violence, as provided in Section 15 of the Extended
4 Jurisdiction Juvenile Prosecution Act, or first degree murder,
5 as provided in Section 30-2-1 NMSA 1978, and a certification
6 hearing was held where the court designated the proceeding as an
7 extended jurisdiction juvenile prosecution;

8 B. the child was sixteen or seventeen years of age
9 at the time of the alleged felony offense, a handgun was used in
10 the commission of that offense and the prosecutor designated in
11 the delinquency petition that the proceeding shall be an
12 extended jurisdiction juvenile prosecution; or

13 C. the child was fourteen to seventeen years of age
14 at the time of an alleged felony offense, the prosecutor
15 requested that the court designate the proceeding as an extended
16 jurisdiction juvenile prosecution, a certification hearing was
17 held on the issue of designation, where the court designated the
18 proceeding as an extended jurisdiction juvenile prosecution. "

19 Section 5. A new section of the Children's Code is enacted
20 to read:

21 " [NEW MATERIAL] DELINQUENCY PETITION-- EXTENDED
22 JURISDICTION JUVENILE. --When a prosecutor files a delinquency
23 petition alleging that a child committed an offense pursuant to
24 Subsection B of Section 4 of the Extended Jurisdiction Juvenile
25 Prosecution Act, the prosecutor shall indicate in the petition

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1 whether or not the proceeding shall be designated as an extended
2 jurisdiction juvenile prosecution. When a prosecutor files a
3 delinquency petition alleging that a child fourteen to seventeen
4 years of age committed an offense pursuant to Subsection A or C
5 of Section 4 of the Extended Jurisdiction Juvenile Prosecution
6 Act, the prosecutor may request the court to designate the
7 proceeding as an extended jurisdiction juvenile prosecution. "

8 Section 6. A new section of the Children's Code is enacted
9 to read:

10 " [NEW MATERIAL] HEARING ON PROSECUTOR'S REQUEST. -- When a
11 prosecutor requests the court to designate a proceeding as an
12 extended jurisdiction juvenile prosecution, the court shall hold
13 a hearing pursuant to Section 13 of the Extended Jurisdiction
14 Juvenile Prosecution Act to consider the request. The hearing
15 shall be held within thirty days after the request is filed
16 unless after the request is filed good cause is shown by the
17 prosecution or the child as to why the hearing should not be
18 held within that period, in which case the court may allow up to
19 ninety days from the date of the filing of the request for the
20 hearing. If the prosecutor shows by clear and convincing
21 evidence that designation of that proceeding as an extended
22 jurisdiction juvenile prosecution serves public safety, the
23 court shall grant the request for designation. In determining
24 whether public safety is served, the court shall consider the
25 factors specified in Section 10 of the Extended Jurisdiction

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1 Juvenile Prosecution Act. The court shall decide whether to
2 designate the proceeding as an extended jurisdiction juvenile
3 prosecution within fifteen days after that request, unless
4 additional time is needed, in which case the court may extend
5 the period up to an additional fifteen days."

6 Section 7. A new section of the Children's Code is enacted
7 to read:

8 "[NEW MATERIAL] PROCEEDING.--A child who is the subject of
9 an extended jurisdiction juvenile prosecution has the right to a
10 trial by jury and to the effective assistance of counsel."

11 Section 8. A new section of the Children's Code is enacted
12 to read:

13 "[NEW MATERIAL] DISPOSITION.--

14 A. If an extended jurisdiction juvenile prosecution
15 results in a guilty plea or finding of guilt, the court shall:

16 (1) impose one or more juvenile dispositions
17 pursuant to Section 32A-2-19 NMSA 1978; and

18 (2) impose the appropriate adult felony
19 sentence pursuant to Section 31-18-15 NMSA 1978, which shall be
20 suspended.

21 B. The child shall be informed by the court that he
22 has been convicted of an adult felony sentence which was
23 suspended on condition that the child successfully complete the
24 juvenile sentence and does not commit another felony offense."

25 Section 9. A new section of the Children's Code is enacted

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1 to read:

2 "[NEW MATERIAL] IMPOSITION OF ADULT SENTENCE. --If a child
3 convicted as an extended jurisdiction juvenile violates the
4 conditions of the suspended adult sentence, or is alleged to
5 have committed a new felony offense, the court may, without
6 notice, revoke the suspended sentence and direct that the
7 offender be taken into immediate custody. The court shall
8 notify the offender in writing of the reasons for revocation of
9 the suspended adult sentence. If the offender challenges the
10 reasons, the court shall hold a summary hearing on the issue.
11 If the court finds that the offender has violated the conditions
12 of the suspended sentence, the court shall sentence the offender
13 as an adult and order adult sanctions authorized by the Criminal
14 Sentencing Act, unless the court finds mitigating factors that
15 justify continuing the suspended adult sentence. "

16 Section 10. A new section of the Children's Code is
17 enacted to read:

18 "[NEW MATERIAL] INAPPLICABILITY TO CERTAIN OFFENDERS. --The
19 Extended Jurisdiction Juvenile Prosecution Act does not apply to
20 an alleged serious youthful offender as defined in Subsection H
21 of Section 32A-2-3 NMSA 1978 or to a youthful offender as
22 defined in Paragraph (3) of Subsection I of Section 32A-2-3 NMSA
23 1978. "

24 Section 11. A new section of the Children's Code is
25 enacted to read:

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1 " [NEW MATERIAL] PUBLIC SAFETY. --

2 A. In determining whether public safety is served by
3 certifying a child to district court, the court shall consider
4 the following factors:

5 (1) the seriousness of the alleged offense,
6 including the existence of any aggravating factors recognized by
7 applicable sentencing guidelines, the use of a handgun and the
8 impact on any victim;

9 (2) the culpability of the child in committing
10 the alleged offense, including the level of the child's
11 participation in planning and carrying out the offense and the
12 existence of any mitigating factors recognized by the sentencing
13 guidelines;

14 (3) the child's prior record of delinquency;

15 (4) the adequacy of the punishment or referral
16 to juvenile community service programs; and

17 (5) any other dispositional options available
18 for the child.

19 B. In considering the factors in Subsection A of
20 this section, the court shall give the greatest weight to the
21 seriousness of the alleged offense and to the child's prior
22 record of delinquency. "

23 Section 12. A new section of the Children's Code is
24 enacted to read:

25 " [NEW MATERIAL] JURISDICTION OF COURT OVER AN EXTENDED

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1 JURISDICTION JUVENILE. --

2 A. The jurisdiction of the court over a child
3 sentenced as an extended jurisdiction juvenile extends until
4 that offender becomes twenty-one years of age, unless the court
5 terminates jurisdiction before that date.

6 B. The court may designate a proceeding as an
7 extended jurisdiction juvenile prosecution, may conduct a trial,
8 receive a plea or impose a disposition pursuant to Subsections A
9 and C of Section 4 of the Extended Jurisdiction Juvenile
10 Prosecution Act, if:

11 (1) a child is alleged to have committed an
12 offense before that child's eighteenth birthday; and

13 (2) the prosecutor files a petition in a timely
14 manner.

15 C. The court has jurisdiction over a child who has
16 been adjudicated delinquent until the child's twenty-first
17 birthday if the child intentionally fails to appear at any court
18 hearing or fails to appear at or flees from any placement under
19 a court order. The court has jurisdiction over a child
20 sentenced as an extended jurisdiction juvenile who fails to
21 appear at any court hearing or fails to appear at or flees from
22 any placement under a court order. "

23 Section 13. A new section of the Children's Code is
24 enacted to read:

25 " [NEW MATERIAL] WRITTEN FINDINGS-- OPTIONS. --

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1 A. The court shall decide whether to order
2 certification to district court within fifteen days after the
3 certification hearing is completed, unless additional time is
4 needed, in which case the court may extend the period up to
5 another fifteen days. If the court orders certification to
6 district court, the order shall contain, in writing, findings of
7 fact and conclusions of law as to why public safety is not
8 served by retaining the proceeding in the court. If the court
9 decides after a hearing not to order certification to district
10 court, the decision shall contain, in writing, findings of fact
11 and conclusions of law as to why certification to district court
12 is not ordered.

13 B. If the court judge decides not to order
14 certification of a child to district court, the court shall
15 designate the proceeding as an extended jurisdiction juvenile
16 prosecution and include in its decision written findings of fact
17 and conclusions of law as to why the retention of the proceeding
18 in the children's court serves public safety. "

19 Section 14. A new section of the Children's Code is
20 enacted to read:

21 " [NEW MATERIAL] CERTIFICATION TO DISTRICT COURT FOR
22 PROSECUTION AS AN ADULT. --

23 A. When a child who is at least fourteen years of
24 age is alleged to have committed an offense pursuant to
25 Subsection A or C of Section 4 of the Extended Jurisdiction

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1 Juvenile Prosecution Act, the court may certify the proceeding
2 to the district court for disposition.

3 B. The court shall certify the proceeding to
4 district court if:

5 (1) the child was sixteen or seventeen years of
6 age at the time of the offense; and

7 (2) the delinquency petition alleges that the
8 child used a handgun in the commission of a felony offense.

9 C. If the court finds that probable cause exists to
10 believe the child committed the alleged offense, the burden is
11 on the child to show by clear and convincing evidence that
12 retaining the proceeding in the court serves public safety. If
13 the court finds that the child has not rebutted the presumption
14 by clear and convincing evidence, the court shall certify the
15 proceeding to district court. "

16 Section 15. A new section of the Children's Code is
17 enacted to read:

18 "[NEW MATERIAL] CRIME OF VIOLENCE DEFINED.--As used in the
19 Extended Jurisdiction Juvenile Prosecution Act, "crime of
20 violence" means:

21 A. shooting at a dwelling or an occupied building or
22 shooting at or from a motor vehicle, as provided in Section
23 30-3-8 NMSA 1978;

24 B. unlawful carrying of a deadly weapon on school
25 premises, as provided in Section 30-7-2.1 NMSA 1978;

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1 C. unlawful possession of a handgun, as provided in
2 Section 30-7-2.2 NMSA 1978;

3 D. negligent use of a deadly weapon, as provided in
4 Section 30-7-4 NMSA 1978;

5 E. unlawful possession of a switchblade, as provided
6 in Section 30-7-8 NMSA 1978;

7 F. unlawful carrying of a replica firearm or BB gun
8 on school premises, as provided in Section 30-7-2.4 NMSA 1978;
9 and

10 G. unlawful transfer of a handgun, as provided in
11 Section 30-7-2.5 NMSA 1978. "

12 Section 16. A new section of the Children's Code is
13 enacted to read:

14 "[NEW MATERIAL] ADJUDICATION OR CONVICTION OF A CRIME OF
15 VIOLENCE-- PROHIBITION ON POSSESSION OF HANDGUNS. --A person who
16 was adjudicated delinquent for, or convicted as an extended
17 jurisdiction juvenile of, a crime of violence as provided in
18 Section 15 of the Extended Jurisdiction Juvenile Prosecution Act
19 is not entitled to ship, transport, possess or receive a handgun
20 for a period of ten years from the time the person was
21 discharged, provided that the person was not convicted of any
22 other felony offense. A person who has received a relief of
23 disability under United States Code, Title 18, Section 925, as
24 amended, is not subject to the restrictions of this section. "

25 Section 17. A new section of the Children's Code is

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1 enacted to read:

2 " [NEW MATERIAL] JUVENILE OFFENDERS-- FAILURE TO
3 APPEAR. --

4 A. A person who intentionally fails to appear for a
5 court disposition is guilty of a felony if:

6 (1) the person was prosecuted in court for an
7 offense that would have been a felony if committed by an adult;

8 (2) the court made findings pursuant to an
9 admission in court or after trial;

10 (3) the person was released from custody on the
11 condition that the person appear in the court for a disposition
12 in connection with the offense; and

13 (4) the person was notified that failure to
14 appear is a criminal offense.

15 B. Whoever intentionally fails to appear for a
16 children's court disposition is guilty of a fourth degree felony
17 and shall be sentenced pursuant to Section 31-18-15 NMSA 1978. "

18 Section 18. A new section of the Criminal Code, Section
19 30-7-2.4 NMSA 1978, is enacted to read:

20 "30-7-2.4. [NEW MATERIAL] UNLAWFUL CARRYING OF A REPLICA
21 HANDGUN OR BB GUN ON SCHOOL PREMISES. --

22 A. Unlawful carrying of a replica handgun or BB gun
23 on school premises consists of knowingly carrying a replica
24 handgun or BB gun on school premises.

25 B. As used in this section:

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1 (1) "BB gun" means a device that fires or
2 ejects a shot measuring eighteen hundredths of an inch or less
3 in diameter;

4 (2) "replica handgun" means any object that
5 closely resembles a rifle, pistol or any type of weapon
6 manufactured to expel a projectile by the action of an
7 explosion; and

8 (3) "school premises" means:

9 (a) the buildings and grounds, including
10 playgrounds, playing fields and parking areas, and any school
11 bus of any public elementary, secondary, junior high or high
12 school in or on which school or school-related activities are
13 being operated under the supervision of a local school board; or

14 (b) any other public buildings or
15 grounds, including playing fields and parking areas that are not
16 school property, in or on which public school-related and
17 sanctioned activities are being performed.

18 C. Whoever commits unlawful possession of a replica
19 handgun or BB gun on school premises is guilty of a fourth
20 degree felony and shall be sentenced pursuant to Section
21 31-18-15 NMSA 1978. "

22 Section 19. A new section of the Criminal Code, Section
23 30-7-2.5 NMSA 1978, is enacted to read:

24 "30-7-2.5. [NEW MATERIAL] UNLAWFUL TRANSFER OF A
25 HANDGUN-- PENALTY. --

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A. Unlawful transfer of a handgun consists of:

(1) the transfer of a handgun to a person who is less than nineteen years of age; or

(2) the transfer of a handgun to a person less than nineteen years of age who has made a false statement in order to become a transferee, if the transferor knows or has reason to know the transferee has made the false statement.

B. Whoever commits unlawful transfer of a handgun to a person under the age of nineteen is guilty of a fourth degree felony and shall be sentenced pursuant to Section 31-18-15 NMSA 1978. "

Section 20. EFFECTIVE DATE. -- The effective date of the provisions of this act is July 1, 1997.